

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1514 be amended to read as follows:

- 1 Page 8, between lines 37 and 38, begin a new paragraph and insert:
2 "SECTION 4. IC 5-14-3-3, AS AMENDED BY P.L.2-2007,
3 SECTION 100, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JANUARY 1, 2010]: Sec. 3. (a) Any person may inspect
5 and copy the public records of any public agency during the regular
6 business hours of the agency, except as provided in ~~section~~ **sections 4**
7 **and 4.4** of this chapter. A request for inspection or copying must:
8 (1) identify with reasonable particularity the record being
9 requested; and
10 (2) be, at the discretion of the agency, in writing on or in a form
11 provided by the agency.
12 No request may be denied because the person making the request
13 refuses to state the purpose of the request, unless such condition is
14 required by other applicable statute.
15 (b) A public agency may not deny or interfere with the exercise of
16 the right stated in subsection (a). The public agency shall either:
17 (1) provide the requested copies to the person making the request;
18 or
19 (2) allow the person to make copies:
20 (A) on the agency's equipment; or
21 (B) on the person's own equipment.
22 (c) Notwithstanding subsections (a) and (b), a public agency may or
23 may not do the following:
24 (1) In accordance with a contract described in section 3.5 of this
25 chapter, permit a person to inspect and copy through the use of
26 enhanced access public records containing information owned by
27 or entrusted to the public agency.
28 (2) Permit a governmental entity to use an electronic device to
29 inspect and copy public records containing information owned by
30 or entrusted to the public agency.
31 (d) Except as provided in subsection (e), a public agency that

maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to any individual or entity for political purposes and may not be used by any individual or entity for political purposes. In addition, the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including electronic mail account addresses):

- (1) A list of employees of a public agency.
- (2) A list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution.
- (3) A list of students who are enrolled in a public school

corporation if the governing body of the public school corporation adopts a policy:

(A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;

(B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or

(C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

(g) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records; or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

SECTION 5. IC 5-14-3-4.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 4.4. (a) Except as provided in subsection (b), disbursement information reported to the attorney general under IC 23-1-53-1(c), IC 23-17-27-6(c), and IC 30-4-5-12(e) is excepted from section 3 of this chapter if both of the following apply:**

(1) The disbursement was made with respect to negotiations with an industrial, research, or commercial prospect for the purpose of persuading the prospect to invest in the locality, to build or relocate a business or organization in the locality, or to perform or provide other economic development services or benefits for the locality.

(2) The person required to prepare the annual report under IC 23-1-53-1(c), IC 23-17-27-6(c), or IC 30-4-5-12(e) specifies in the annual report that the disbursement was made for a purpose set forth in subsection (a)(1) and requests that it be

excepted from section 3 of this chapter.

(b) The exception provided under subsection (a) does not apply if:

(1) the attorney general determines that a violation of applicable state or federal law relating to the disbursement has occurred and the attorney general takes enforcement action under the applicable law; or

(2) the attorney general, in furtherance of an investigation, refers the disbursement information to a state, federal, or local law enforcement agency or a government agency with responsibility for enforcement of state or federal law, or a local ordinance, and the agency receiving the disbursement information from the attorney general determines that a violation of applicable law has occurred and takes enforcement action under the applicable law.

SECTION 6. IC 23-1-20-6.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 6.1. "Development agreement" means an agreement that:**

(1) is between:

(A) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and

(B) either:

(i) a person; or

(ii) a unit of local government; and

(2) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

SECTION 7. IC 23-1-20-6.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 6.2. "Development agreement payment" means any payment that a direct or indirect holder of:**

(1) an owner's license under IC 4-33; or

(2) an operating agent contract (as defined in IC 4-33-2-14.6); is required to make under a development agreement.

SECTION 8. IC 23-1-53-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1. (a)** On written request of any shareholder, a corporation shall prepare and mail to the shareholder annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year most recently completed, an income statement for that year, and a statement of changes in shareholders' equity for that year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the public accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

- (1) stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
- (2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) If a corporation is a recipient of a local development agreement payment, the corporation shall prepare an annual report containing the following information before February 1 of each year:

(1) A verified accounting of all accounts associated with local development agreement payments received in the preceding calendar year.

(2) An itemized list of all disbursements of local development agreement payments made to any person exceeding five thousand dollars (\$5,000) in the aggregate during the preceding calendar year. The itemized list must include:

- (A) the legal name of the recipient of a disbursement;**
- (B) the date of each disbursement;**
- (C) the amount of each disbursement; and**
- (D) the purpose of each disbursement.**

(d) The principal officer of a corporation subject to subsection (c) shall annually, before March 1 of each year, file with the attorney general a verified written certification stating that an annual report has been prepared showing at least the items listed in subsection (c). The certification must state that the annual report is available to the attorney general upon request.

SECTION 9. IC 23-17-2-15.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 15.1. "Development agreement" means an agreement that:**

(1) is between:

- (A) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and**
- (B) either:**

- (i) a person; or**
- (ii) a unit of local government; and**

(2) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

SECTION 10. IC 23-17-2-15.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

[EFFECTIVE JANUARY 1, 2010]: **Sec. 15.2. "Development agreement payment" means any payment that a direct or indirect holder of:**

- (1) an owner's license under IC 4-33; or**
- (2) an operating agent contract (as defined in IC 4-33-2-14.6); is required to make under a development agreement.**

SECTION 11. IC 23-17-27-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 6. (a) Except as provided in articles of incorporation or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish the member the corporation's latest annual financial statements, which may be consolidated or combined statements of the corporation and the corporation's subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany the statements. If annual financial statements are not reported upon by a certified public accountant, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records that does the following:

- (1) States the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describes the basis of preparation.
- (2) Describes any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) If a corporation is a recipient of a local development agreement payment, the corporation shall prepare an annual report containing the following information before February 1 of each year:

- (1) A verified accounting of all accounts associated with local development agreement payments received in the preceding calendar year.**
- (2) An itemized list of all disbursements of local development agreement payments made to any person exceeding five thousand dollars (\$5,000) in the aggregate during the preceding calendar year. The itemized list must include:**
 - (A) the legal name of the recipient of a disbursement;**
 - (B) the date of each disbursement;**
 - (C) the amount of each disbursement; and**
 - (D) the purpose of each disbursement.**

(d) The principal officer of a corporation subject to subsection (c) shall annually, before March 1 of each year, file with the

attorney general a verified written certification stating that an annual report has been prepared showing at least the items listed in subsection (c). The certification must state that the annual report is available to the attorney general upon request.

SECTION 12. IC 30-4-1-2, AS AMENDED BY P.L.61-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2. As used in this article:

(1) "Adult" means any person eighteen (18) years of age or older.

(2) "Affiliate" means a parent, descendant, spouse, spouse of a descendant, brother, sister, spouse of a brother or sister, employee, director, officer, partner, joint venturer, a corporation subject to common control with the trustee, a shareholder, or corporation who controls the trustee or a corporation controlled by the trustee other than as a fiduciary, an attorney, or an agent.

(3) "Beneficiary" has the meaning set forth in IC 30-2-14-2.

(4) "Breach of trust" means a violation by the trustee of any duty which is owed to the settlor or beneficiary.

(5) "Charitable trust" means a trust in which all the beneficiaries are the general public or organizations, including trusts, corporations, and associations, and that is organized and operated wholly for religious, charitable, scientific, public safety testing, literary, or educational purposes. The term does not include charitable remainder trusts, charitable lead trusts, pooled income funds, or any other form of split-interest charitable trust that has at least one (1) noncharitable beneficiary.

(6) "Court" means a court having jurisdiction over trust matters.

(7) "Income", except as otherwise stated in a trust agreement, has the meaning set forth in IC 30-2-14-4.

(8) "Income beneficiary" has the meaning set forth in IC 30-2-14-5.

(9) "Inventory value" means the cost of property to the settlor or the trustee at the time of acquisition or the market value of the property at the time it is delivered to the trustee, or the value of the property as finally determined for purposes of an estate or inheritance tax.

(10) "Minor" means any person under the age of eighteen (18) years.

(11) "Person" has the meaning set forth in IC 30-2-14-9.

(12) "Personal representative" means an executor or administrator of a decedent's or absentee's estate, guardian of the person or estate, guardian ad litem or other court appointed representative, next friend, parent or custodian of a minor, attorney in fact, or custodian of an incapacitated person (as defined in IC 29-3-1-7.5).

(13) "Principal" has the meaning set forth in IC 30-2-14-10.

(14) "Qualified beneficiary" means:

(A) a beneficiary who, on the date the beneficiary's

qualification is determined:

- (i) is a distributee or permissible distributee of trust income or principal;
- (ii) would be a distributee or permissible distributee of trust income or principal if the interest of the distributee described in item (i) terminated on that date;
- (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
- (iv) has sent the trustee a request for notice;
- (v) is a charitable organization expressly designated to receive distributions under the terms of a charitable trust;
- (vi) is a person appointed to enforce a trust for the care of an animal under IC 30-4-2-18; or
- (vii) is a person appointed to enforce a trust for a noncharitable purpose under IC 30-4-2-19; or

(B) the attorney general, if the trust is a charitable trust having its principal place of administration in Indiana.

(15) "Remainderman" means a beneficiary entitled to principal, including income which has been accumulated and added to the principal.

(16) "Settlor" means a person who establishes a trust including the testator of a will under which a trust is created.

(17) "Trust estate" means the trust property and the income derived from its use.

(18) "Trust for a benevolent public purpose" means a charitable trust (as defined in subdivision (5)), a split-interest trust (as defined in Section 4947 of the Internal Revenue Code), a perpetual care fund or an endowment care fund established under IC 23-14-48-2, a prepaid funeral plan or funeral trust established under IC 30-2-9, a funeral trust established under IC 30-2-10, a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need described in IC 30-2-13, and any other form of split-interest charitable trust that has both charitable and noncharitable beneficiaries, including but not limited to charitable remainder trusts, charitable lead trusts, and charitable pooled income funds.

(19) "Trust property" means property either placed in trust or purchased or otherwise acquired by the trustee for the trust regardless of whether the trust property is titled in the name of the trustee or the name of the trust.

(20) "Trustee" has the meaning set forth in IC 30-2-14-13.

(21) "Development agreement" means an agreement that:

(A) is between:

- (i) the direct or indirect holder of an owner's license issued under IC 4-33 or an operating agent contract (as defined in IC 4-33-2-14.6); and**
- (ii) either a person or a unit of local government; and**

(B) sets forth the holder's financial commitments to support economic development in a unit or a geographic region.

(22) "Development agreement payment" means any payment that a direct or indirect holder of:

(A) an owner's license under IC 4-33; or

(B) an operating agent contract (as defined in IC 4-33-2-14.6);

is required to make under a development agreement.

SECTION 13. IC 30-4-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 12. (Accounting by Trustees)

(a) Unless the terms of the trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the trustee shall deliver a written statement of accounts to each income beneficiary or his personal representative annually. The statement shall contain at least:

(1) all receipts and disbursements since the last statement; and

(2) all items of trust property held by the trustee on the date of the statement at their inventory value.

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal Revenue Code.

(c) Upon petition by the settlor, a beneficiary or ~~his~~ **the beneficiary's** personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time, provided, however, that the court will not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

(d) If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in section 13(a) of this chapter

1 with the court biennially, and the court may, on its own motion, require
 2 the trustee to file such a statement at any other time provided there is
 3 good cause for requiring a statement to be filed.

4 **(e) If a charitable trust or trust for a benevolent public purpose**
 5 **is a recipient of a local development agreement payment, the**
 6 **trustee shall, before February 1 of each year, prepare an annual**
 7 **report containing the following information:**

8 **(1) A verified accounting of all accounts associated with local**
 9 **development agreement payments received in the preceding**
 10 **calendar year.**

11 **(2) An itemized list of all disbursements of local development**
 12 **agreement payments exceeding five thousand dollars (\$5,000)**
 13 **in the aggregate made to any person during the preceding**
 14 **calendar year. The itemized list must include:**

15 **(A) the legal name of the recipient of a disbursement;**

16 **(B) the date of each disbursement;**

17 **(C) the amount of each disbursement; and**

18 **(D) the purpose of each disbursement.**

19 **(f) The trustee of a trust subject to subsection (e) shall annually**
 20 **file with the attorney general a verified written certification before**
 21 **March 1 stating that an annual report has been prepared showing**
 22 **at least the items listed in subsection (e). The certification must**
 23 **state that the annual report is available to the attorney general**
 24 **upon request."**

25 Renumber all SECTIONS consecutively.

(Reference is to EHB 1514 as reprinted March 24, 2009.)

Senator STEELE